

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

GRAYLING DAVIS, )  
Petitioner, )  
 ) C.A. No. 04-10386-MLW  
v. )  
 )  
BERNARD BRADY, SUPERINTENDENT, )  
Respondent. )

ORDER

WOLF, D.J.

Petitioner Grayling Davis, through his counsel, James M. Fox, Esq., of the Massachusetts Committee for Public Counsel Services, filed a pleading entitled "Motion for Waiver of Fees (Notice of Appeal and Appeal Docketing)." Construing this pleading as a Motion for Leave to Proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 and Fed. R. App. P. 24 (a)(1), the motion is deficient. Counsel for petitioner may not submit this type of request on behalf of a petitioner unless the motion is accompanied by an affidavit from the petitioner showing in detail his inability to pay the fees and costs, his entitlement to redress, and the issues to be presented on appeal. See Fed. R. App. P. 24 (a)(1)(A)-(C); 28 U.S.C. § 1915(a)(1) (providing, in relevant part, that a court may authorize an appeal without prepayment of fees for a person who submits an affidavit that includes a statement of all assets and shows an inability to pay such fees. The affidavit must state the nature of appeal and

affiant's belief that the he is entitled to redress.").<sup>1</sup> See also Rule 3 of the Rules Governing Section 2254 Cases (providing for the filing of an affidavit in accordance with § 1915, along with a certified inmate account statement showing the amount of funds to petitioner's credit).

Here, the motion is not in proper form because it is signed (electronically) by counsel. It is not accompanied by an affidavit of the petitioner signed under the penalties of perjury and averring that he is entitled to redress. Additionally, the motion is not accompanied by a certified prison account statement, and therefore the Court is unable to determine whether petitioner financially qualifies for *in forma pauperis* status on appeal.

In light of the above, petitioner's Motion for Waiver of Fees (Docket No. 28) is DENIED without prejudice to renew within

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<sup>1</sup>The affidavit requirement under the *in forma pauperis* statute serves a deterrent function. Rowland v. California Men's Colony, Unit II Men's Advisory Council, 506 U.S. 194, 205 (1993). In Rowland, the United States Supreme Court stated: "[o]ne who makes this affidavit exposes himself 'to the pains of perjury in a case of bad faith.' ... This constitutes a sanction important in protection of the public against a false or fraudulent invocation of the statute's benefits." Rowland v. California Men's Colony, Unit II Men's Advisory Council, 506 U.S. 194, 205 (1993) (quoting Adkins v. E.I. DuPont de Nemours & Co., 335 U.S. 331, 338 (1948) quoting Pothier v. Rodman, 261 U.S. 307, 309 (1923)). The perjury sanction is an important requirement in protecting the public against misuse of public funds by a litigant who has sufficient funds of his or her own, and against the filing of "frivolous or malicious" lawsuits funded by the public. Rowland, 506 U.S. at 205.

thirty (30) days of the date of this Order, or as otherwise ordered by the United States Court of Appeals for the First Circuit ("First Circuit").

The clerk is directed to send petitioner's counsel a standard application form for waiver of the appellate filing and docketing fees used by the First Circuit, along with a copy of this Order.<sup>2</sup>

/s/ Mark L. Wolf  
UNITED STATES DISTRICT JUDGE

DATED: April 9, 2007

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<sup>2</sup>This is a six (6) page form which addresses the statutory requirements. The first page of the form provides as follows:

I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621).

Affidavit to Accompany Motion for Leave to Appeal *In Forma Pauperis*, at 1.